

(2022) 08 CAL CK 0092
In the Calcutta High Court
Case No : Criminal Revision No. 1854 Of 2020

Saktipada Sannigrahi & Anr.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 31-08-2022

Acts Referred:

Protection Of Women From Domestic Violence Act, 2005 — Section 2(a), 2(q), 2(s),
12, 20, 23
Indian Penal Code, 1860 — Section 34, 325, 498A, 506

Citation : (2022) 08 CAL CK 0092

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

Advocate : Debashee Adhikary

Final Decision : Allowed

Judgement

Ajoy Kumar Mukherjee, J

1. The present revisional application has been preferred for quashing of the proceeding being Misc. Case No.68 of 2020 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the PWDV Act), pending before the learned Chief Judicial Magistrate, Sadar Court, Purulia.
2. The opposite party no.2 herein is the wife of one Kuntal Panda (who is not the petitioner herein) and after marriage, said Kuntal Panda and the opposite party no.2 started to reside as husband and wife at Flat No.104, Block – KA, Siddha Town, Rajarhat, under P.S. Narayanpur.
3. Petitioner alleged that since the very inception of the marital life, the opposite party no.2 never shown any inclination or enthusiasm to accept her marriage nor she had any sympathy, trust, regard, respect, love or affection towards adjustment of her matrimonial life. Subsequently, she was detected to be a psychiatric patient and she was medically treated by a psychiatrist.
4. On 15th February, 2020 the respondent no.2 left the matrimonial home

situated at Rajarhat, New Town, on the pretext of visiting her ailing grandmother at Purulia. Thereafter, it came to the knowledge that on 17th February, 2020 the opposite party no.2 has filed an FIR being FIR No.59 of 2020 under Section 498A/325/34/506 of the IPC against her husband, her parents in law and other family members and also against the present petitioners. The petitioners have been wrongfully and mischievously implicated in the said FIR by the opposite party no.2 with an ulterior motive.

5. The petitioner no.1 herein is a permanent resident of Bankura District which is admitted by the opposite party no.2 in her written complaint dated 17th February, 2020. The petitioner no.1 is a businessman by profession and is a family man. After the aforesaid marriage of respondent no.2, the petitioner no.1 never visited in the marital home of the respondent no.2 at Rajarhat and last time, the petitioner no.1 had seen the respondent no.2 at her marriage ceremony and had never interfered in the family life of the respondent no.2.

6. The petitioner no.2 herein is 20 years old daughter of petitioner no.1 who is also a student and also permanent resident of Bankura District, which is also admitted by the opposite party no.2 in her complaint. The opposite party no.2 in conspiracy with her parents has criminally intimidated the husband that until the ownership of the residential property at Rajarhat is transferred in favour of opposite party no.2, her husband will continue to suffer cruelty and other criminal proceedings.

7. Both the petitioner no.1 and 2 never had any far away dealing with the family life of the opposite party no.2 and opposite party no.2 with an atrocious motive has implicated them to create wrongful oppression upon the husband and parents of the husband in order to grab the aforesaid Rajarhat flat.

8. On 3rd July, 2020 the opposite party no.2 mischievously filed present application under Section 12 of the PWDV Act against the petitioners herein including her husband, her parents in law and also against the present petitioners which has been registered as Misc. Case No.68 of 2020 and is pending before the learned 1st Judicial Magistrate, Purulia. The statements and contents of the said application under Section 12 of the said Act is altogether contradicting with the statements made in the written F.I.R dated 17th February, 2020, lodged by opposite party no.2 herein.

9. The petitioner no.1 and 2 both are permanent resident of Bankura District and, as such, question of inflicting any kind of physical or mental cruelty or domestic violence cannot and does not arise against the far distant relatives, permanently settled in a separate district. In the Misc. Case No.68 of 2020 the opposite party no.2 had made no specific allegation against the present petitioners nor there is any specific allegation as to how and when and in what manner the petitioners caused the Act of domestic violence upon the respondent no.2. The petitioners have been wrongfully and maliciously victimized by the opposite party no.2 with mal-intent. Being aggrieved by the aforesaid, facts and

circumstances of the case the petitioners herein have approached for quashing of the proceeding against them.

10. In spite of service of summons, none appeared on behalf of the opposite party. The affidavit of service filed in Court today be kept with the record.

11. Ms. Debashee Adhikary, learned advocate appearing on behalf of the petitioners submits that the question of inflicting any physical or mental cruelty cannot be attributed against the present petitioners. The statements contained in the said application are omnibus in nature. Learned Magistrate is wrongfully continuing the said proceeding against the present petitioners under Section 12 of the said Act, because the petitioners are the distant relatives of the opposite party no.2. There is no single allegation of any nature of domestic violence against the petitioners and the respondent no.2 never resided together in a shared household at any point of time.

12. On perusal of the written complaint dated 17th February, 2020 it appears that no specific allegation has been attributed against the present petitioners. It also appears from the application filed under Section 12 of the said Act that only in paragraph 15 of the said application, the opposite party no.2 has implicated the present petitioners alleging "respondent no.2 to 5 on their occasional visit to their household flat continued to in a consorted manner subject to her mental and physical cruelty. Petitioner had to execute household activities tirelessly and in case of tiny lapse continued to bear wrath of the respondents". It also appears that in the said application under Section 12, the address of the present petitioners has been given by the opposite party no.2, as village Bhutsahar, P.S. Simlapal, District Bankura, West Bengal. It further appears that in the said application under Section 12 of the said Act, the petitioners have prayed for direction upon the respondent no.1 i.e. the husband (who is not the petitioner herein) to secure alternative accommodation of the petitioner as enjoyed by her in the shared household at Flat No.104, Siddha Town, Rajarhat, preferably in Central Kolkata and to arrange for monthly payment of rent of the same and also prayed for restraining her husband and her father in law from alienating and or disposing of the said shared household. She has also prayed for passing appropriate order under Section 23 of the said Act for monthly maintenance Rs.15,000/-. She has further prayed for compensation and damages for causing various injuries including mental torture and emotional distress to the extent of Rs.1 crore. She has further prayed for restoring gold ornaments received by the petitioner in her Boubhat ceremony from the respondent no.3 and her streedhan articles which lies in her shared household in Rajarhat in the custody of the respondent no.1.

13. Under section 12 of the PWDV Act, an aggrieved person may present an application before Magistrate seeking one or more reliefs under the Act. The term "aggrieved person" is defined in section 2(a) of the said Act, which means any woman, who is or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the

respondent. So according to definition of aggrieved person, the person aggrieved must have domestic relationship with the respondent. Again section 2 (q) which defines the term "respondent" also speaks that respondent means any person who is or has been, in a domestic relationship with the aggrieved person and against whom, the aggrieved person has sought any relief under this Act.

14. Again the term "domestic relationship" has been defined in 2(f) of the Act, which means a relationship between two person, who live or have at any point of time, lived together in a shared house hold. Now "shared house hold" under section 2(s) means household where the person aggrieved lives or at any stage lived in a domestic relationship either singly or along with the respondent.

15. In view of the above, pleading it is clear that the respondent has not prayed any relief against the present petitioners in the said application under Section 12 of the said Act. Furthermore, it is not her case that the petitioners are either owning shared household or they have any liability to pay monetary relief under Section 20 of the PWDV Act to the respondent. It further appears from the interim order passed by the learned Magistrate that he has restrained the opposite party no.2 of that case i.e. father-in-law of the opposite party no. 2 from dispossessing, alienating and committing act i.e. caused injury to or would cause any apprehension in the mind of the petitioners that her alleged streedhan articles would be dispossessed without her knowledge till further order.

16. From the four corners of the allegations leveled against the petitioner, there is no averment that petitioners at any point of time was under domestic relationship with the opposite party No. 2 in any shared household and opposite party No. 2 has not prayed any relief against petitioners herein and as such present petitioners does not come within the definition of "respondent" as defined in section 2(q) of the said Act. Admittedly the present petitioners are residing in a separate district in Bankura and as no relief has been sought for against the present petitioners, I find that present petitioners are not necessary party for adjudication of the said proceeding under the PWDV Act and continuance of the present proceeding against the present petitioners is mere abuse of the process of the Court and the proceeding also suffers from mis-joinder of the present petitioners.

17. In view of the above, CRR 1854 of 2020 is accordingly allowed. Let the proceeding being Misc. Case No.68 of 2020 under Section 12 of the said Act pending before the learned Chief Judicial Magistrate, Sadar Court, Purulia, is hereby quashed in respect of the present petitioners only as they are not necessary party and their presence is not required for the purpose of adjudication of the aforesaid Misc. Case No.68 of 2020 under Section 12 of the said Act.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible.